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IN THE

Supreme Court of the United States

No. 944

October Term, 1942.

MERLIN F. RAINES,
Petitioner-Plaintiff,
vs.
UNEMPLOYMENT COMPENSATION COMMISSION OF NEW JERSEY,
Defendant-Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS, AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS, AND BRIEF IN SUPPORT THEREOF.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Merlin F. Raines, prays that a writ of certiorari issue to review the judgment of the New Jersey

Court of Errors and Appeals, entered in the above-entitled cause on January 22, 1943 (S. of C.* p. 54), affirming the judgment of the New Jersey Supreme Court in the same cause (S. of C., p. 50).

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The Unemployment Compensation Law of New Jersey provides by Section 19h that an employer shall be subject to the tax authorized by the act if he has as many as eight employees in as many as twenty weeks in any calendar year (N. J. R. S. 43: sub-title 21; P. L. 1936, p. 1045). Section 19g broadens this base of eight employees by providing in effect that whenever a contractor uses the services of subcontractors he "shall be deemed to employ each individual in the employ of * * * each subcontractor," that the employees of these subcontractors shall be added to those of the contractor and the latter shall be liable to the tax if the total is eight or over (except that the subcontractor who employs as many as eight employees will himself be liable for the tax on these).

The petitioner had been a builder of dwelling houses since 1938 (S. of C., p. 28). At no time did he employ as many as eight individuals for the maximum period of time required by the statute for attaining taxable status (S. of C., p. 37). But he did regularly engage the services of subcontractors, some of whom had one or more individuals in their employ (S. of C., p. 28).

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* The parenthetical references made herein are to the pages of the record, or "State of the Case" in the court below, copies of which are being furnished with this petition and brief, in accordance with Rule 38-7.

On January 31, 1941, an auditor of the respondent reported that the petitioner had attained employer status, i. e., was liable for the tax, this result being reached "by considering the employees of the subcontractors as employees of Merlin F. Raines, under the provisions of Section 19g" (S. of C., p. 33). On June 30, 1941, "arbitrary assessments" were imposed on petitioner in the total sum of $796.84 (S. of C., pp. 10, 16-26). It appears on the face of those assessments that they were based not only on wages paid by the petitioner to his employees, but also on wages paid by his subcontractors to their employees (S. of C., p. 37).

The subcontractors whose services were engaged by the petitioner were independent contractors as defined by Section 21-8c of the Law, over whose work the petitioner had no control or direction (S. of C., pp. 28, 30). Although the petitioner was without direct means to determine who were the employees of the subcontractors or the amount of the wages paid to them (S. of C., p. 33), the aforesaid assessments included penalties for petitioner's failure to report these employees and their wages.

JURISDICTION.

The jurisdiction of this Court is invoked pursuant to 28 U. S. C. A., Sec. 344 (Judicial Code, Sec. 237 as amended).

Petitioner, in initiating his certiorari proceedings in the New Jersey Supreme Court, specified as reasons for setting aside the assessments levied upon him by the Unemployment Compensation Commission that such assessments were "in violation of the rights given plaintiff by the 14th Amendment to the Federal Constitution in that

(a) Plaintiff would thereby be deprived of his property without due process of law, and (b) Plaintiff would be denied the equal protection of the laws" (S. of C., p. 41).

These claims were rejected by the New Jersey Supreme Court, which dismissed the writ. They were reasserted on appeal to the New Jersey Court of Errors and Appeals, the highest court of that State in which a decision could be had. That court affirmed the lower court.

There was thus drawn in question in this litigation in the state courts the validity of a statute of New Jersey, attacked on the ground of its being repugnant in part to the 14th Amendment to the Constitution of the United States and violative of rights, privileges and immunities given by that Amendment and especially set up and claimed by the petitioner.

THE QUESTION PRESENTED.

The question for determination here is whether the "due process" and "equal protection" clauses of the Federal Constitution are not violated by that provision of Section 19g of the Unemployment Compensation Law of New Jersey (N. J. R. S. 43:21-19g) which imposes upon a contractor the irrebutable presumption that he is the employer of his subcontractors' employees, and which requires the Commission to add those employees to the contractor's own employees to determine whether the taxable base of eight employees laid down by the Law is present, and to assess the contractor accordingly.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

I. The decision of the New Jersey Court of Errors and Appeals holding that the questioned statutory provision in New Jersey Revised Statutes 43:21-19g, taxing contractors on the basis of their subcontractors' employees, was not in violation of the "due process" and "equal protection" clauses of the Federal Constitution, is probably not in accord with applicable decisions of this Court (as shown in the accompanying brief of petitioner).

The state court should have held such provision to be unreasonable, discriminatory and invalid under the 14th Amendment to the Federal Constitution because—

(a) It imposed a fictitious premise as the basis for taxation and bound the taxpayer by the fiction.

(b) It introduced a subclassification that contravened the Act's basic principle of classification.

(c) It required the petitioner to pay an excise tax on another man's privilege.

(d) Its effect was necessarily to discriminate unfairly against petitioner and his class.

II. The state court further erred in upholding the imposition of penalties upon the petitioner for failure to report the wages of his subcontractors' employees, when he had no means of ascertaining these. Such imposition was a taking of petitioner's property without due process of law.